

# HOUSE BILL REPORT

## HB 1297

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### As Amended by the Senate

**Title:** An act relating to aggravating circumstances in first degree murder.

**Brief Description:** Including the existence of a no contact order as an aggravating circumstance in first degree murder.

**Sponsors:** Representatives DeBolt, Sheahan, Ballasiotes, Costa, Benson, McMorris, Thompson, Lambert, Radcliff, K. Schmidt, Mitchell, Sherstad, Robertson, Pennington, Hickel, Kastama, Sullivan, Sump, Sheldon, Delvin, Cooke, Morris, Wensman, Mason and Mielke.

**Brief History:**

**Committee Activity:**

Law & Justice: 2/5/97, 2/11/97 [DP].

**Floor Activity:**

Passed House: 2/28/97, 86-9;

Passed House: 1/12/98, 86-7.

Senate Amended.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

**Staff:** Bill Perry (786-7123).

**Background:** Crimes Subject to the Death Penalty or Life in Prison: Only a person convicted of a first-degree murder that is both premeditated and aggravated may be sentenced to death or to life in prison without release.

First-degree murder is the killing of another when committed under one of the following three conditions:

- With premeditated intent;
- With extreme indifference to human life while engaged in conduct creating a grave risk of death; or

- While committing or attempting to commit, or immediate flight from the commission or attempted commission of first- or second-degree robbery, rape, arson, or kidnapping, or first-degree burglary.

The death penalty or life imprisonment is a possibility only under some circumstances involving the first of these three conditions, i.e., only under premeditated first-degree murder.

However, not all premeditated first-degree murders are subject to these sentences. Life in prison without the possibility of release is available only if the premeditated first-degree murder is also "aggravated." The death penalty is available only if the murder is "aggravated" and there are not sufficient "mitigating" circumstances to merit leniency. If the prosecutor has decided to seek the death penalty, a special sentencing proceeding is held following a conviction for premeditated aggravated first-degree murder to determine whether the death penalty will be imposed. At this hearing the question to be decided is whether there were sufficient mitigating circumstances to merit leniency. Leniency means life in prison without possibility of release.

### **AGGRAVATING CIRCUMSTANCES**

Aggravating circumstances that the prosecution must prove before a sentence of life in prison without release or a sentence of death may be imposed include:

- The victim was a law enforcement, corrections, probation or parole officer, firefighter, judge, juror, witness, prosecuting attorney, defense attorney, or news reporter, and the murder was related to the victim's position;
- The offender had been previously convicted of some crime and was in prison or jail, or on leave from prison, or was an escapee from prison;
- The offender paid another to commit the murder, or solicited or agreed to receive payment for the murder;
- The offender committed the murder to conceal a crime or protect the identity of a criminal or to avoid prosecution as a persistent offender;
- The offender committed the murder to obtain, maintain, or advance a position in an organization or group;
- The offender committed the murder as part of a drive-by shooting;
- The offender murdered multiple victims in a single act or as part of a common scheme or plan; or
- The offender committed the murder in the course or furtherance of, or in flight from, robbery in the first or second degree, rape in the first or second degree, residential burglary or burglary in the first or second degree, kidnapping in the first degree, or arson in the first degree.

Again, in order to impose the death penalty, the jury must find beyond a reasonable doubt both that the defendant is guilty of aggravated, premeditated first-degree murder and that there are not sufficient mitigating factors to merit leniency. If there is not a finding of a lack of mitigating factors, the sentence is life in prison without the possibility of release.

Protection Orders: Under various statutes a person may be ordered by a court to avoid contact with another. Several statutes deal specifically with protection orders issued to prevent contact between members of the same family or household. For purposes of some of these statutes, "family or household members" is defined to include spouses, ex-spouses, persons with a child in common, adults related by blood or marriage or who are or have lived together, persons 16 or older who live or have lived together and have or had a dating relationship, persons with a legal parent-child relationship, including a step-relationship, and grandparents and grandchildren.

In the case of an arrest and prosecution for certain crimes committed by one family or household member against another, pre-trial orders may prohibit the defendant from having contact with the alleged victim. Following conviction for one of these offenses, a similar order may be issued as part of the sentence. These "domestic violence" crimes include rape, assault, reckless endangerment, coercion, burglary, trespass, malicious mischief, kidnapping, unlawful imprisonment, and stalking.

Similar kinds of restraining orders may be issued as part of a civil action for marriage dissolution, maintenance, or child support. In addition, a person who alleges past domestic violence and the likelihood of irreparable injury from future domestic violence may get a no contact order issued against the alleged offender. Temporary ex parte orders may be obtained pending a hearing, and in some instances where efforts at personal service would be demonstrably futile or unduly burdensome, service of notice to the respondent may be made by publication or by mail.

**Summary of Bill:** An additional aggravating circumstance is provided for purposes of qualifying a premeditated first-degree murder for a sentence of life in prison without possibility of release or a sentence of death.

An aggravating circumstance exists when the victim was in a family or household member relationship with the offender or an accomplice of the offender, and:

- (1) At the time of the murder, a no contact or restraining order was in place;
- (2) Before the murder, the order had been properly served on the offender;  
and
- (3) The murder violated the terms of the order.

**EFFECT OF SENATE AMENDMENT(S):** The Senate amendment creates two new aggravating circumstances instead of one. It is an aggravating circumstance if the

offender was at the time of the murder the knowing subject of a court order prohibiting contact with, or disturbance of the victim. It is also an aggravating circumstance if the offender and victim were family or household members and the offender had, three or more times in a five year period, assaulted or harassed the victim. Harassing the victim includes threatening the victim or another with bodily injury or confinement, or with damage to property, or maliciously doing anything intended to substantially harm the physical or mental health or safety of the victim or another.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Those who violate domestic violence protective orders should be dealt with to the full extent of the law. Sometimes years of violence precede issuance of a protection order. This bill will help establish that these orders are to be taken seriously.

**Testimony Against:** None.

**Testified:** Representative DeBolt, prime sponsor; George Steele, citizen (pro); and Detective Sergeant Ed Thompson, Thurston County Sheriff's Office (pro).